

The Legalization of Marijuana is Inevitable

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By *Brian Doherty*

On Homecoming Day at the University of Southern California, Elizabeth Tauro strode purposefully through the dense, shifting mob of pre-game partiers, bearing huge rolls of “Yes on 19” stickers on each arm.

Saying yes to California’s Proposition 19 would have meant that adults could legally possess up to an ounce of marijuana. They also would have been allowed to grow marijuana on up to 25 square feet of their property. Local governments would have been free to raise (but not reduce) these limits on possession and cultivation. They would also have been authorized to license, regulate, and tax sales of the long-demonized weed.

Tauro, a senior majoring in public policy, was working the crowd on this Saturday before Election Day on behalf of Students for Sensible Drug Policy. At this point in the campaign, she said, she was mostly “just letting everyone know that Tuesday is Election Day” rather than arguing the benefits of pot legalization. “Our generation supports reforming marijuana laws,” she said. “It’s just a question of whether they vote.”

Not enough of them did. Proposition 19 lost by 54 percent to 46 percent just six weeks after most polls showed it winning. The drug war’s foes had been on the verge of achieving a staggering victory, one that would have forced a confrontation with the federal government. Instead they saw history slip through their fingers.

Yet reformers are still optimistic. Prop. 19 won a higher vote total (and higher vote percentage) than any previous attempt to legalize pot in the United States. It made legalization—not medical marijuana, not decriminalization, but full legalization—a legitimate political debate in the country’s biggest state. And it forged a coalition that stretched far beyond the usual axis of antiprohibition activists, notwithstanding some dissension within the ranks. The opposition, meanwhile, conceded some important arguments to the reformers, suggesting that public opinion has moved further along than ever before. The legalization of marijuana, activists argue, is a matter of *when*, not *if*.

Who Supported Prop. 19

Prop. 19 sprang from the brain and bank account of Richard Lee, a medical marijuana entrepreneur who operates a big dispensary and associated retail stores in Oakland as well as Oaksterdam University, a vocational school for the new industry that has had more than 12,000 students pass through since 2007.

Lee has played the local politics of medical marijuana as skillfully as anyone, winning city approval for industrial-sized indoor growing operations to feed the medical

distribution system as well as a statement of intent to legalize the general sale of marijuana to adults as soon as the state permits it. Lee's opponents paint him as the would-be kingpin of legal pot, using the political system to guarantee that his in-the-works industrial grows will corner a market he is fighting to create.

Even while thriving within the medical marijuana system, Lee has always pushed for full legalization, because he thinks "prohibition is hypocritical, unjust, and unfair." In March 2009, a poll Lee commissioned showed, for the first time, a majority of California voters supporting legalization. At that point, he began drafting language for a ballot initiative. Two other legalization measures vied for the 2010 ballot, but only Lee, who spent nearly \$1 million just on gathering signatures, had the money to succeed.

Traditional drug reform groups initially either snubbed Lee or advised him that a presidential election year would be better. "It was surprising to see how hostile they got," he says. Lee joined the board of the Marijuana Policy Project, hoping he could steer it toward supporting his initiative, but the group lacked the money and the will, leading Lee to resign and go it largely alone. Representatives of the Drug Policy Alliance (DPA) did help him with drafting the language of the initiative, while remaining doubtful about the timing.

The major drug reform groups did eventually all get behind Prop. 19, and two of the biggest moneybags in reform circles, George Soros and Peter Lewis, chipped in during the last days of the campaign. (Soros' \$1 million donation was funneled not through Lee's organization but through a separate pro-19 group managed by the DPA.) It "hurt us," Lee says, that the big drug policy groups "didn't get on board until late in the process."

But long before Soros hopped on, the Yes on 19 coalition had expanded far beyond the drug policy world. Seasoned Democratic operatives joined the pro-19 campaign, even though incoming California Gov. Jerry Brown opposed it and Sen. Dianne Feinstein chaired the opposition. The progressive netroots blog *Firedoglake* launched a "Just Say Now" campaign that, together with Students for Sensible Drug Policy, placed 50,000 targeted get-out-the-vote calls. And perhaps most significantly, the proposition was endorsed by such drug policy newbies as the California chapter of the National Association for the Advancement of Colored People (NAACP) and the League of United Latin American Citizens of California.

"The groups most adversely affected by the drug war—minorities, Latinos, African Americans—were not [traditionally] in the fray," says Neill Franklin, a former police officer who leads Law Enforcement Against Prohibition (LEAP). When the NAACP endorsed Prop. 19, he says, it was "a game changer. I called [Alice Huffman, head of the California NAACP,] up and told her I was law enforcement, and I was for Proposition 19. She said she practically fell out of her chair." LEAP sent representatives to more than 250 events around the state, emphasizing that police and court resources should be used more productively than in the failed attempt to get people to stop selling and using a relatively benign drug. (A September 2010 study for the Cato Institute by Harvard economist

Jeffrey Miron found that California spends \$960 million a year on marijuana law enforcement.) LEAP recruited the National Black Police Association and the National Latino Officers Association for the cause.

Organized labor was another important source of new support. Dan Rush, special operations director for the United Food and Commercial Workers (UFCW) Union Local #5, got excited about the jobs that could be created in a legal market for marijuana and hemp. He convinced his union, against initial doubts, that “this initiative would create an industry in retail, agriculture, and food processing, and UFCW is a retail, agriculture, and food processing union.” He became labor director for the Yes on 19 campaign.

Rush convinced the powerful Service Employees International Union and the Northern California Council of the Longshoremens to back Prop. 19, and he persuaded the California Labor Federation (CLF) to refrain from opposing it. When the next legalization campaign comes along, Rush swears he’ll be able to move the CLF from neutrality to support, which could be a key step toward changing minds in the Democratic Party.

Who Didn’t Support Prop. 19

Although Prop. 19 found new allies in the civil rights and labor movements, it did not have the unified support of the marijuana reform movement. The most successful and active medical marijuana group, Americans for Safe Access (ASA), was officially neutral. That in itself was not necessarily a problem. Given the group’s institutional mandate to deal exclusively with medical marijuana, Yes on 19 spokesperson Dale Sky Jones says, ASA’s neutrality was “the closest they could come to officially supporting us.”

Medical marijuana dispensaries were split on the issue. Although the initiative was ultimately crafted to change nothing at all about the laws in place protecting doctor-certified patients’ access to pot and their ability to grow, possess, and exchange it, rumors were rife that they would be hit with new limits on how much they could possess. (The current limit—set by court decisions, not statute—is whatever is deemed medically necessary for the patient.) Others noted that the proposition didn’t legalize smoking pot in public, and worried that this would be a loophole allowing authorities to harass medicinal smokers. Pro-19 canvassers say many dispensaries refused to allow campaign literature in their shops. Since the passage of California’s Compassionate Use Act in 1996, the medical folks had managed to create a market niche for sellers and a relatively safe haven for users, and many feared that opening up the market to more competition would be bad for their bottom line.

For the same reason, and with more anger, most of the growers from Northern California’s fertile Humboldt and Mendocino counties were against Prop. 19. The initiative lost in both. Allen St. Pierre, executive director of the National Organization for Reform of Marijuana Laws (NORML) and one of the oldest warriors in the national drug policy fight, says the growers rebelled when they decided there was “no way post-prohibition for anyone to fetch \$15 or \$25 for a gram of dried vegetable matter.” People

currently making \$25 to \$30 an hour trimming weed in Humboldt imagined their jobs reduced to minimum-wage work or eliminated entirely.

Prop. 19 supporters pushed back with the idea of a post-legalization market similar to the market for wine, with room for both cheap, mass-produced offerings like Two-Buck Chuck and expensive, artisanal products like Chateau Petrus for connoisseurs. But with the growing medical market already driving down prices, most Northern California growers didn't want to hear it. They saw Lee as the wannabe Sam Walton of grass. "People will want something faceless and easy," one grower told me. "They want their fucking Big Mac. In order to make something of quality, you have to deal with a lot more labor and a lot more time. Just use machines, turn out crap, sell it cheap."

In the end, it might not matter whether the "marijuana community" per se supports legalization. The total number of voters in the major growing counties amounted to only 65,000 or so ballots in an election that was lost by half a million, and even adding all the people across the state involved in cutting or moving their product wouldn't be enough to have ensured victory. Still, many Prop. 19 strategists say they want to bring in medical marijuana producers, sellers, and consumers as stakeholders from the beginning next time around. They hope to persuade all involved that full legalization would ensure less police harassment, and less danger from violent black market criminals, and they hope to persuade producers that, especially in the short term, there will still be room for small family growers.

Other activists are less forgiving. "If growers are against legalization," *West Coast Leaf* Publisher Chris Conrad told *The Huffington Post*, "they can't be part of the legalization process, and now it's up to them to show good-faith support or be left out of the process....Prop. 19 offered them a legal customer base, a statewide regulatory framework, and a local voice to protect their interests. The next campaign is more likely to pitch a more restrictive approach to bring [in] more conservative voters like Asians and housewives, who want heavy-handed controls, and will consider whether growers deserve any consideration at all. Those folks are unreliable at best, traitors to the cause at worst."

What the Opposition Concedes

The narrow space around the sunken floor of Hollywood's hip Café Was was crammed with a dozen reporters. Cameras jockeyed for an angle on the table where activist/actor Danny Glover, singer Melissa Etheridge, and likely 2012 Republican presidential candidate Gary Johnson talked about the importance of passing Proposition 19. Also on the bill: comic actor Hal Sparks, Sarah Lovering of the Marijuana Policy Project, and 20-year L.A. police veteran Stephen Downing of LEAP.

The activists pointed out the fiscal madness of spending billions over decades on a failed attempt to stop people from using a benign weed. They talked about the taxes not collected when a \$14 billion industry is driven into the black market. They discussed the rape kits that went untested while police processed 861,000 misdemeanor pot arrests in

California last year. They argued that it's actually easier to keep kids from pot in a legal market, since legal merchants check ID and illegal drug dealers don't. They noted that we don't tend to see illegal vineyards in state and national parks in California, where violent drug dealers sometimes grow their wares.

Alone and earnest on the sidewalk outside the club, a blonde woman in a business suit was passing out pamphlets. It was Alexandra Datig, one of the primary public voices against Prop. 19. She comes from the "I stopped; you shouldn't start" school. A former call girl in Heidi Fleiss' famous escort business, Datig insists that her own life was derailed by drugs—pot and the harder stuff she insists pot led to—and that legalization will only create more stories like hers.

Datig's pamphlet shed light on the shifting shape of the drug reform debate. It stressed, for example, that voting against Prop. 19 would "not interfere with a patients [sic] access to medical marijuana." Those who remember the mid-1990s might be amazed that the anti-19 forces declined to attack, and in fact defended, medical marijuana, just 14 years after a remarkably contentious political fight over the Compassionate Use Act, a.k.a. Proposition 215, the first successful initiative to legalize marijuana for medical purposes in the United States. Medical pot is now as mainstream in California as surfing, and 14 other states and Washington, D.C., have embraced it as well.

Datig's literature also implicitly accepted a central argument of the legalizers: that black markets create negative ancillary effects. "Legalization would not eliminate the black market or organized crime," the pamphlet warned. "Black market sales to kids would expand.... Taxation would return buyers to the black market." The No on 19 forces thus conceded that the black market created by prohibition is something to worry about.

That was the most striking thing about the Prop. 19 fight: The opposition was not defending the drug war status quo. They just picked at particular aspects of the initiative, hoping to move lukewarm legalizers into the no column. While that approach undoubtedly helped kill Prop. 19's chances, it is great news for the larger debate over drug policy. Although 26 of the state's biggest daily newspapers editorialized against the initiative, many used language like this from the *San Francisco Chronicle*: "We agree with the architects of Prop. 19 that the 'war on drugs'—especially as it applies to marijuana—has been an abject failure."

The opposition to 19 was also heavily outspent, by more than 10 to one. The last time a major drug law reform was on the ballot in California—Prop. 5 in 2008, which would have moved nonviolent drug offenders from jail to a largely treatment-oriented model—it was defeated with \$1.8 million in California Correctional Peace Officers Association cash. CCPOA stayed out of the fray on 19, as did many of the formerly anti-reform and deep-pocketed Indian tribes. Some police chiefs and narcotics officers groups gave tens of thousands to fight 19, and the California Beer and Beverage Distributors gave \$10 grand, but no one seemed willing to spend significant amounts fighting legalization.

Why Did Prop. 19 Lose?

Message discipline is tight in the Yes on 19 camp. No one sounds discouraged, even after their electoral defeat. All parties say they will remain unified, this time from the start, in a likely 2012 redo, when the youth vote they are sure can push them over the top is more likely to come out for the presidential race. Richard Lee cautions that he is not in a position to sink the same amount of money into this cause again. But NORML's Allen St. Pierre says one of Prop. 19's great long-term victories was that it uncovered "more young millionaires committed to marijuana law reform"—such as former Facebook president Sean Parker, who gave the campaign \$100,000—"and we are interacting with them in their ascendancy, not in their doddering retirement years."

But it's hard to know how to do better if you aren't sure why you failed. I found no consensus among pro-19 forces regarding what went wrong. Some are sure that more money early on, more TV ads, and/or more mailers would have made a decisive difference, but that the timing and the messaging were otherwise fine. Most 19ers saw their campaign as an attempt to get an already existing mass of pro-legalization citizens to vote, as opposed to changing anti-legalization voters' minds. Steve Fox of the Marijuana Policy Project thinks that that attitude is dead wrong, and that more sales work on the essential harmlessness of pot needs to be done to ensure enough of a margin of victory. The UFCW's Dan Rush says the next initiative should include a statewide tax and regulatory scheme. *Firedoglake's* Michael Whitney thinks the campaign has to put more effort into "building the kind of grassroots infrastructure and volunteer network needed to sustain turnout." (More than one 19er thought that such efforts in Los Angeles especially, where the initiative lost, could have won it for them statewide.) Ethan Nadelmann of the Drug Policy Alliance wants to lose the initiative's language that would forbid employers from discriminating against or punishing an employee for using pot if it didn't actually impair job performance, which the California Chamber of Commerce and several newspapers cited as a reason to oppose Prop. 19.

Almost everyone agrees that if a benefactor wants to drop \$1 million on the campaign the next time round, he should do it *before* absentee ballots have been cast. (Instead, around a third of the campaign's money came in only in the last two weeks.) And while debates at in-person events and in the papers are all well and good, legalizers need to reach the mass of people whose main exposure to political thought is on TV. That means more TV ads (like one the pro-19 camp launched at the last minute) with police officers explaining that legal pot will mean more, not less, law and order.

Public support for pot legalization continues to rise. According to Gallup, since 1995, before the dawn of the medical pot era, support for marijuana legalization has risen nationally from 25 percent to 46 percent. And as of Gallup's October 2010 poll, in states west of Texas 58 percent of those polled support the change that Prop. 19 tried to make.

Still, the reform movement has not yet managed to sell legalization to otherwise libertarian-minded folk as a logical part of constitutionalist, limited government. A CNN Election Day exit poll in California found that 61 percent of those who think government is doing too much nonetheless opposed Prop. 19, as did 53 percent of those "angry" at the federal government and 63 percent of Tea Party supporters.

Even more surprising, a post-election Greenberg Research poll financed by Prop. 19 supporters found that 31 percent of California voters who believe pot should be legal nonetheless cast their ballots against the measure. That suggests many voters objected to this particular proposition, rather than legalization in general. The initiative, with its many provisions designed to pre-empt opposition, offered multiple targets for opponents to shoot at.

One point of contention, stressed heavily by the anti-19 campaign, was the local option, which gave local jurisdictions leeway to establish their own regulations and taxes for the cultivation and sale of marijuana. According to opponents, this system would have created “a jumbled legal nightmare,” as anti-19 spokesman Roger Salazar put it, even though California, like most of America, already deals with many controversial matters, from booze to gambling to gun possession, with a variety of local restrictions rather than one statewide rule.

One aspect of Prop. 19 that bothered both anti-pot activists and pro-legalization libertarians was the provision restricting pot-related job discrimination. Anti-pot propagandists envisioned a wave of stoned school bus drivers zipping off bridges and zonked nurses passing out over patient’s beds, while libertarians argued that it was an unnecessary intrusion into employment contracts.

It’s also possible that many voters felt the issue was less pressing after Gov. Arnold Schwarzenegger, a month before Election Day, signed S.B. 1449, a measure that reduced possession of less than an ounce of marijuana from a misdemeanor to an infraction, similar to a traffic violation. Schwarzenegger’s move killed a great selling point for 19 proponents: Why burden so many tens of thousands of people a year with a searchable criminal record and get them embedded in a criminal justice system that could eventually lead to prison, just for dope? While it was already true that almost no one went to jail or prison in California for mere use or small possession, 1449 lowered the legal difficulties facing pot users even further.

Still, 1449 does not solve the problems of crime and corruption associated with black market *sales* of pot. And, as co-chair of the Prop. 19 legal committee Hanna Dershowitz points out, by eliminating court costs for the system, under 1449 the incentive for cops to waste lots of time targeting young minorities might be even higher. Dope law enforcement is now a pure cash cow, so even under 1449 police attention will still be mistargeted to harassing pot smokers. (And with a targeted class that won’t always be able to pay fines on time, even the new system could lead to real criminal consequences.)

But in truth, as Ethan Nadelmann says, “we have no hard evidence whatsoever that any one of the provisions helped or hurt and no really good evidence about whether any particular message helped or hurt.” Several legalization advocates suspect the voting was swayed more by general uneasiness with sudden, far-reaching change, and that when they have a second chance to think about legalization, they’ll come around.

What They’re Fighting For

All this talk of messaging, coalition building, and conventional electioneering is itself a sign that the politics of repealing prohibition underwent a significant shift during the Prop. 19 campaign. Outright legalization is now on the table in several states, with measures likely to reach the 2012 ballot in at least California, Colorado, and Nevada. Activists hope as many as half a dozen states may end up in play. California Assemblyman Tom Ammiano (D-San Francisco) has a legislative take on legalization ready to roll out again in 2011 as well (last year an earlier version became the first such bill in American history to get out of committee in the Assembly), though politicians are clearly more scared of legalization than are voters.

Although he is still a dark-horse candidate for the Republican presidential nomination, former New Mexico Gov. Gary Johnson, as the first major politician in America to make legalization a big part of his message, could turn up the volume on the national conversation if he gets anywhere in the primaries. So could Rep. Ron Paul (R-Texas) if he runs.

But even with all this hopeful talk, there is a darker side to the politics of pot, as I was reminded at an election night party where I ran into Stephanie Landa. Landa is a sweet, gentle woman who spent three years in federal prison for running a San Francisco marijuana growing operation that, with the full knowledge of local law enforcement officials, served the city's medical market. When I first met her in November 2009, she was being forced to live in a grim halfway house with unpleasant, nutty neighbors. Her every move was monitored. She was legally prohibited from seeing the father of her child, since he was also arrested in the federal bust that sent her to prison.

Landa, a heroine and a martyr within the medical marijuana community, knows it well and understands its concerns. But for Landa, determining the right thing to do when it came to Prop. 19 did not require complicated guesses about how Attorney General Eric Holder might enforce federal law in California, or how counties would regulate and tax cannabis, or who might come out ahead in a legal marijuana market. As she put it, "I just don't want anybody to go to prison anymore."